

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: ERP MNDC O RP RR

Introduction

This hearing dealt with an application by the tenants for a monetary order, an order that the landlord make emergency repairs, an order that the landlord make repairs and an order permitting the tenant to reduce rent. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Did the landlord act reasonably and quickly to repair a leak in the roof?

Is the tenant entitled to compensation for loss suffered as a result of the leak?

Has the landlord had adequate notice of the tenant's request for repairs?

Background and Evidence

The parties agreed that the roof over the tenants' kitchen was compromised and as a result the tenants had a number of areas in the kitchen in which water was dripping from the ceiling. The parties further agreed that in early August the tenants first reported a leak in the kitchen. The landlord testified that he applied plastic roof cement on the roof the day following the report from the tenants. The tenants were not aware that a repair had been done on that date, but the parties agreed that there were no further problems with leaks for several months thereafter.

The tenant testified that at the end of October he reported to the landlord that the roof was leaking again. The landlord claimed that the tenants did not report another leak until November 2. The landlord testified that he attended the rental unit on November 3 and that same day telephoned six roofing companies to determine their availability to

perform repairs. On November 4 XXX Roofing attended at the rental unit, applied a roof repair gel and recommended replacement of the roof. XXX Roofing advised at that time that they were not available to perform the work until 2009.

The landlord testified that he contacted the tenant on November 5 and was advised that the ceiling was not leaking that day. The landlord further testified that he again spoke with the tenants on November 6 and learned that the ceiling was leaking on that date. Because he did not want to wait until 2009 to repair the roof, on November 6 the landlord contacted 5 roofing companies and was able to secure a commitment from YYY Roofing to attend the rental unit and give an estimate. On November 7 YYY Roofing examined the roof and recommended that the roof be replaced. A written estimate was provided on November 10 and YYY Roofing committed to beginning work on the roof on November 19. The landlord was advised to obtain a building permit.

The landlord applied for a building permit on November 18 and obtained the permit on November 21. The tenants suggested that the landlord could not have obtained a building permit within 2 days of application but did not suggest that work had been completed without a permit. The roof was completed on or about November 26.

The tenants testified that while the ceiling was leaking in November, they had to clean up the floor with towels and put bowls in place to catch the drips. The tenants provided photographs showing four bowls on the floor and one on a high cupboard. The tenants claimed that \$200.00 worth of food which had been left on the counter was damaged by water and that during the three week period in which the leak continued they had to eat in restaurants as they claim they were unable to use their kitchen. The tenants claim the value of the damaged food, the cost of their restaurant meals and the cost of fuel used to drive to the restaurants. The tenants testified that two ceiling fans may have been damaged by the water and suggested that although the lights work properly, they have not tried to use the fans as they fear the motors may have been damaged. The tenants claim \$160.00 as the value of the fans. The tenants testified that one of them had to miss work on several days because of illness and suggested that her illness was caused by stress and possible exposure to molds. The tenants seek to recover \$600.00 in lost wages. The tenants also claim \$100.00 as the cost of replacing towels and

washing towels that were used to catch the drips.

The tenants also made the argument that they should be entitled to recover 10 months rent because they had possibly been exposed to molds and had been at risk during their tenancy. The tenants sought to introduce testimony from a former tenant who was prepared to testify that the ceiling had been leaking prior to the beginning of this tenancy. At the hearing I advised the tenants that I would not hear testimony from their witness as I considered his testimony to be irrelevant.

On November 27 the landlord contracted with XYZ Environmental Services to conduct an indoor air quality assessment. The results of the assessment showed readings of mold spores which were described as “very low.” The report stated that “Overall the total spore count inside is elevated over the outside reading; however where there are elevated individual types of molds inside, the levels are not high enough to indicate an active and hazardous mold situation.”

Analysis

In order to be successful in their claim, the tenants must prove that the landlord failed to act within a reasonable time after learning of the leaks and must also prove that they suffered some loss from the landlord’s failure to act. While I can appreciate that the leak was inconvenient for the tenants, I am satisfied that the landlord acted quickly to address the problem. I find that the landlord was first advised of the leak on November 2 and that he attended the unit, inspected and began his inquiries with roofing companies the next day. I find the actions of the landlord to be very reasonable in not hiring XXX Roofing, who first inspected the roof, as the re-roofing would have been further delayed causing further inconvenience to the tenants. The landlord was at the mercy of the availability of contractors and absent evidence that other reputable roofing companies could have performed repairs earlier, I find the landlord repaired the roof as soon as possible.

The fact that the ceiling may have leaked before November 2 is, in my mind, irrelevant as the tenants enjoyed some 10 months of their tenancy with no problem. The tenants cannot claim for a health risk that they have not proven existed and from which they

have suffered no quantifiable loss. While the tenants claim that they were ill from exposure to molds, they have not provided medical reports showing that they suffered from any illness or linking such illness to exposure to molds. Further, the tests performed on the landlord's initiative show that there is no indication of active mold growth. The tenants claim that the tests were done after they cleaned and bleached the areas affected by the water, but as mold was more likely to grow between the ceiling and roof, I find that the cleaning efforts of the tenants did not substantially affect the outcome of the air assessment. The tenants provided no evidence that they missed any work or suffered any loss of income as a result of the stress created by the leaks.

Having viewed the photographs provided by the tenants, I am not satisfied that the leaks prevented the tenants from accessing or using their kitchen. The bowls on the floor would certainly have posed an inconvenience, but there is no indication that the appliances, countertops and table could not be used. Further, the tenants provided no receipts showing how much was spent on food or fuel and provided no supporting evidence showing that any food was damaged or the value of that food.

The tenants have not proven that their ceiling fans suffered any damage whatsoever as by their own testimony they have not attempted to run the fans.

As for the claim for the replacement of towels and the cost of laundry, the photographs show that the towels used were older and worn and I find the cost of washing the towels would have been minimal. As the loss of these towels and the cost of washing them would have been in the de minimis range in any event, I decline to award any compensation.

The tenants' request for an order that the landlord conduct repairs is dismissed with leave to reapply. The Rules of Procedure and rules of natural justice require the tenants to give details of their claim in order to permit the landlord opportunity to prepare a response. I find that the tenants failed to provide those details, depriving the landlord of an opportunity to adequately prepare a response.

The tenants claim to reduce their rent is also dismissed with leave to reapply as it appears to be substantially related to the request for repairs.

Conclusion

I find that the tenants have failed to prove their claim and I dismiss their claim.

Dated: December 19, 2008